

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JACINTO APONGAN ALIAS VER, ACCUSED-APPELLANT.

G.R. No. 112369. April 04, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

While admitting his presence at the scene of the incident, Appellant Jacinto Apongan nonetheless denies authorship of the crime charged against him. Instead, he claims that another person (who was not charged) singly carried out the felonious act. But the prosecution eyewitness points only at appellant and his co-accused, Ronald Revadona (who did not appeal), as the actual perpetrators. Since we find no cogent reason to disturb the findings and conclusions of the trial court, this appeal must thus fail.

Accused-appellant, together with Ronald Revadona, Teodorico Paraiso and Roberto Apongan, was charged in the court below with the crime of murder in an Information[1] filed by 3rd Assistant Provincial Fiscal Reuel D. Yares, dated August 6, 1987. Said Information reads as follows:

“The undersigned accuses TEODORICO PARAISO alias Commander CONDOR, RONALD REVADONA alias DIEGO and JACINTO APONGAN alias VER and ROBERTO APONGAN alias BERTO of the crime of MURDER, committed as follows:

That on or about the 8th day of June 1986, at about 8:30 to 9:00 o’clock in the evening, at Barangay Lagumbingan, Municipality of Midsayap, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused TEODORICO PARAISO alias Commander CONDOR, RONALD REVADONA alias DIEGO, JACINTO APONGAN alias VER, and ROBERTO APONGAN alias BERTO, armed with a deadly bladed weapon, with intent to kill, with treachery and evident premeditation and with the use of superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab Mrs. Victoria Samulde, thus inflicting upon the latter stab wounds on the different parts of her body which were the direct and immediate cause of her death.”

To the above charge, all the accused entered a plea of “not guilty.”[2] After due trial,[3] Judge Zain B. Angas of the Regional Trial Court of Midsayap, Cotabato, Branch 18, rendered his Decision[4] convicting only the appellant and Ronald Revadona, and acquitting Roberto Apongan and Teodorico Paraiso for insufficiency of evidence. We quote below the full dispositive portion of said Decision promulgated on September 11, 1991:

“WHEREFORE, the court finds accused Ronald Revadona and Jacinto Apongan guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code and the court hereby sentences said Ronald Revadona and Jacinto Apongan to suffer the penalty of reclusion perpetua. Ronald Revadona and Roberto Apongan are further sentenced to jointly and severally indemnify the heirs of Mrs. Victoria Samulde the amount of P50,000.00 and to pay proportionate costs.

The court hereby acquits Roberto Apongan and Teodorico Paraiso for insufficiency of evidence. Roberto Apongan and Teodorico Paraiso are ordered released from detention unless they are otherwise held for another legal cause.”[5]

The Facts

After evaluating the testimonial and documentary evidence for both prosecution and defense, the trial court made the following findings of facts:

“The evidence on record has clearly established that at about eight-thirty o’clock in the evening of June 8, 1986 at Barangay Lagumbingan, Midsayap, Cotabato, Mrs. Victoria Samulde and her son Celestino Samulde, Jr. were walking along the barangay road between their house and the house of another son of Mrs. Samulde. They came from the house of the other son. Along the road to the left going to the house of Mrs. Samulde from the house of the son she visited that evening were banana plants, bamboo grooves [sic] and a ‘porok’ (small hut). The ‘porok’ is about fifteen meters to Mrs. Samulde’s house. To the right or opposite side of the road are ipil-ipil trees and the house of Ronquillo. Ronquillo has a broiler poultry which is raised under a camarin. An electric bulb is maintained in the poultry to keep the broilers warm. This electric bulb from the Ronquillo’s poultry reflects its illumination up to the road. It is a little dark along the side of the ipil-ipil trees because of the shadow they cast. The ipil-ipil trees are as tall as Celestino, Jr. While Mrs. Samulde and her son were walking near the ipil-ipil trees, Celestino, Jr., saw Jacinto Apongan and Ronald Revadona walking also along the road coming towards them. Celestino, Jr. first saw Jacinto and Ronald walking towards them at a distance of about ten meters. He recognized Jacinto and Ronald because of the reflection of the electric bulb coming from the Ronquillo poultry. He has known Jacinto and Ronald because they also lived in the same barrio of Lagumbingan and they are neighbors. He has known Ronald since childhood. He used to play basketball with Ronald. He readily identified Ronald and Jacinto in court.

Celestino, Jr. was walking about two steps ahead of his mother. Celestino, Jr. and his mother continued walking until they met Jacinto and Ronald. Without any warning or word, Ronald tried to grab the head of Celestino, Jr. Celestino, Jr. ducked to avoid being caught at the same time ran. While running about five meters he looked back and saw Jacinto and Ronald stabbing his mother, Mrs. Samulde. Celestino, Jr. stopped running and looked at Jacinto and Ronald stabbing his mother several times with long knives. He could see the reflection of the knives. Jacinto and Ronald continued stabbing Mrs. Samulde until she fell to the ground. When Mrs. Samulde fell on the ground Jacinto and Ronald still stabbed her making sure that she was already dead. Afterwards, Jacinto and Ronald ran away towards the ricefields. Celestino, Jr. also ran home and called for his father, Celestino Samulde, Sr. and told him that his mother was stabbed. Mrs. Samulde died of multiple stab wounds and dcapitation (sic).”[6]

In arriving at the above findings, the court a quo relied heavily on the testimony of Celestino Samulde Jr., the only prosecution eyewitness to the fatal stabbing of Mrs. Victoria Samulde, his mother.[7]

To establish conspiracy among the accused, the prosecution also presented Ervin Araneta who testified that on May 25, 1986, the four accused, namely, Roberto and Jacinto Apongan, Ronald Revadona and Teodorico Paraiso, together with Manuel Tagacay, Sr., Victor Alising and the witness, purportedly all members of the Communist Party of the Philippines-New People’s Army (CPP-NPA), held a conference at the house of Roberto Apongan wherein the latter proposed the liquidation of Mrs. Victoria Samulde because of a personal grudge and also because of the exorbitant interest rates she allegedly charged from the people. A second meeting took place on a later date, attended by Jacinto Apongan, Revadona, Paraiso, Alising, Eduardo Araneta and the witness, where the execution of Mrs. Samulde was planned. Revadona and Apongan volunteered to carry out the plan, while Araneta and Paraiso were assigned to assist them. At 8:00 in the evening of June 8, 1986, about three to four hundred meters away from the Samulde house, the witness met Paraiso, who informed him that men were already posted to kill Mrs. Samulde. He later heard shouts and cries of a child. Three days after, he met Revadona, Paraiso, Araneta and appellant who narrated to him the killing of Mrs. Samulde. Sometime in August 1988, he gave his statement to the police authorities.[8] On redirect examination, the witness stated that he and Accused Paraiso had disagreed with the plan because there was allegedly no order from higher CPP-NPA officers.[9]

The defenses interposed by the accused consisted of denial of the commission of the crime and its imputation to a third party. Corroborated by two other witnesses, two of the accused (Revadona and appellant) pinpointed one Eduardo Araneta as the mastermind and sole perpetrator of the brutal slaying of Mrs. Samulde. Revadona and appellant related that on the fateful night of June 8, 1986, they were at the public plaza of Midsayap to watch an amateur singing contest. At about 7:00 to 7:30 that evening, they met Eduardo Araneta and the three of them hiked back to Lagumbingan which was about five kilometers away. While walking, Araneta allegedly sought the help of appellant to kill Mrs. Samulde, which appellant refused for fear that he might get caught and be jailed. Moving on, they saw Mrs. Samulde and her son walking towards their direction. Upon meeting Mrs. Samulde, Eduardo, who was about five meters ahead of appellant, suddenly stabbed her several times with a bolo until she fell to the ground. When Mrs. Samulde was on the ground, Eduardo further slashed her throat. Caught by surprise, Revadona and appellant stood motionless, until Eduardo shouted at them to run. They all ran towards the rice field where they hid for about two hours. Neither revealed to anyone what they witnessed that evening.[10] Defense Witness Perla Tagacay declared that she had seen Araneta on June 5, 1986 at the tailor shop where she worked. Araneta then related to her his problem of nonpayment of his wages by the Samuldes, for whom he had worked as a laborer the previous year. Eduardo also recounted that on one occasion, the Samuldes poked a gun at him when he asked for his wages. He further intimated that if Mrs. Samulde still refused to pay him, he would kill her before the June 11-12, 1986 fiesta of Lagumbingan.[11]

Another defense witness, Dionisio Ballena, Jr., claimed that the same Eduardo Araneta, who was his friend, confided to him sometime in 1986 that he killed Mrs. Samulde because the latter had refused to pay his wages when he worked for her.[12]

The Trial Court's Ruling

The trial court gave full credence to the testimony of prosecution eyewitness Celestino Samulde, Jr., finding him "convincing, candid, persuasive and truthful." Explaining, the court said:

"x x x (It) has no reason to doubt the testimony of Celestino, Jr. In spite of the rigid and detailed cross examination made by the two counsels (sic) for the accused on him, Celestino, Jr. never wavered in his testimony. He stuck to the substantial and material points of his testimony, consistent with a truthful and credible witness. If he saw Eduardo to be at the scene of the crime he could have easily stated so. Instead, he categorically declared that the two, Jacinto and Ronald, are the only ones responsible for the death of his mother. There is no reason for Celestino, Jr. to exclude Eduardo from any responsibility in connection with the death of Mrs. Samulde had he really seen Eduardo killing her mother. There is no evidence indicating any reason to exculpate Eduardo. He could not relate anything more than what he saw." [13]

In discrediting the defense of appellant and Revadona, the court *a quo* asserted:

"On the other hand, Jacinto and Ronald had all the reason to point to another as the author of the crime to free themselves from culpability. The court is not convinced of their defense that Eduardo did the killing of Mrs. Samulde without their participation. Their denial cannot destroy and overcome the positive and direct testimony of Celestino, Jr." [14]

With respect to the other accused, the trial court found that the evidence did not show that "Roberto Apongan and Teodorico Paraiso actually participated in stabbing to death Mrs. Samulde. There is no evidence showing their presence at the scene of the incident. The presence of Teodorico walking along the National Irrigation road at Lagumbingan, about three to four hundred meters away from the house of Mrs. Samulde before the stabbing incident can hardly be considered being present at the scene of the crime." With these findings and on the premise that "mere presence of an accused at the discussion of a conspiracy, even approval of it without any active participation in the same, is not enough for purposes of conviction," the court acquitted Roberto Apongan and

Paraiso for insufficiency of evidence.

From the judgment of the trial court, only Apongan appealed.[15]

Issues

In his brief,[16] accused-appellant assigns the following errors:

“(1) The trial court erred in convicting appellant Jacinto Apongan despite the failure of the prosecution witness to identify him positively;

(2) The trial court erred in finding conspiracy in the killing of Victoria Samulde; and,

(3) The trial court erred in not appreciating circumstances in the evidence which favor the innocence of appellant Jacinto Apongan.”[17]

In support of his assigned errors, appellant contends that Celestino Samulde Jr. could not have actually seen the assailants since the act of stabbing took place in a dark area. Besides, if Celestino Jr. really knew Jacinto Apongan and saw him stab his mother, he should have “normally called Jacinto Apongan and told him not to stab his mother, or he should have normally called up his father and told him that Jacinto Apongan stabbed his mother.” For Celestino’s failure to do so, appellant ascribes “serious doubt” unto said witness’ identification of the assailant.[18]

Appellant further maintains that the only evidence of the alleged conspiracy was the testimony of prosecution witness Araneta. In view however, of the “hazy evidence” identifying appellant as one of the actual assailants, he claims that “it cannot be positively concluded that he acted in concert or unity with his co-accused x x x.” In addition, there is no showing that the injuries sustained by the victim, “though numerous, were inflicted by different persons and/or instruments.”

Rejecting the grounds advanced by appellant for a reversal of the assailed Decision, the Solicitor General asserts:

“Even granting arguendo, that Celestino, Jr. did not see who actually stabbed Mrs. Samulde because the place where she was stabbed was allegedly dark, the fact that Celestino, Jr. saw only two persons whom he positively recognized as appellant and Revadona, both armed with knives, within the immediate vicinity of the scene of the crime before the commission thereof and that after Apongan and Revadona tried and failed to grab Celestino, Jr.’s head, Mrs. Samulde, who was just two steps behind her son, would subsequently lay mortally wounded, affords a reasonable basis to conclude that appellant and Revadona were the perpetrators of the crime. These established circumstances constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the appellant and his co-accused as the author of the crime. In effect, these proven and established circumstances are consistent with each other, consistent with the hypothesis that appellant is guilty and at the same time inconsistent with any other hypothesis except that of guilt. Such circumstances will suffice conviction (People vs. Caneda, 12 SCRA 19).”[19]

This Court’s Ruling

First Issue: Positive Identification of Appellant

The following candid and consistent testimony of Eyewitness Celestino Samulde Jr., 15-year-old son of the victim, is enlightening:

Q Can you tell us who killed her?

A Yes, Sir.

Q Who were the persons responsible for the killing of your mother?

A Jacinto Apongan and Ronald Revadona, Sir.

Q Were you present during the time when your mother was killed?

A Yes, Sir.

Q When was that when your mother was killed?

A At Lagumbingan, Midsayap, Cotabato, Sir.

Q About what time when she was killed?

A About 8:00 in the evening, Sir.

Q If Ronald Revadona is in the courtroom, can you point him to us?

A Yes, Sir.

Q Please point him now to the Court.

A (witness pointed to a person sitting on the bench for the accused, wearing blue t-shirt, who when asked of his name, answered: 'I am Ronald Revadona').

Q Who are the other persons whom you said, killed your mother?

A Jacinto Apongan, Sir.

Q If he is in the courtroom, can you point him also to us?

A Yes, Sir. (witness pointed to the other person sitting on the bench for the accused, beside Ronald Revadona, who when asked of his name, answered: 'I am Jacinto Apongan.')

Q Why do you know Ronald Revadona?

A We were living in the same barrio, and I know him since our early childhood, Sir.

Q Why do you know also Jacinto Apongan?

A Because he is a resident of Lagumbingan, Midsayap, Cotabato, Sir.

Q Can you tell us who among the two stabbed your mother?

A The two of them, Sir.

Q What weapon did they used (sic) in killing your mother?

A A knife, Sir.

Q Who among the two was having a knife during that time?

A Both accused were armed with a knife, Sir.”[20]

The following declarations of the same witness, elicited by the defense counsel, Atty. Midpantao Adil, amplifies the correctness of Samulde, Jr.’s positive identification of appellant as one of the assailants:

Q When did you see the assailant, before the stabbing or after the stabbing?

A The assailant came from the place where there was light, whereas, we were on the dark portion where the ipil-ipil trees are located, Sir.

Q You were on the dark portion while the assailant was on the reflection of the light?

A Yes, Sir.

Q So, your mother was ambushed by Jacinto Apongan while he was on the area reflected by the bulb, is that what you want to tell the Honorable Court?

A Jacinto Apongan and Ronald Revadona were in the place where there was reflection of the light, Sir.

x x x x x x x x

Q How far were you from the supposed assailant from (sic) the first time you noticed them?

A Around ten (10) meters away.

Q And immediately, at that distance, you recognized them?

A Yes, I recognized them because of the reflection of the light.”[21]

Celestino, Jr. did not waver in his testimony despite extensive and grueling questioning by the defense. He remained steadfast and consistent despite the defense counsel’s repetitive questions seemingly designed to confuse him. Following Atty. Adil’s examination, counsel for Accused Revadona, Atty. Visitacion Lavarias, again inquired on the light in the area where the incident happened, thus:

“Atty. Lavarias: You said there was an electric bulb inside the poultry house of (sic) that night of the incident on June 8, 1986, how big was that bulb?

A Small bulb, about 60 watts, Ma’am.”[22]

The young witness stood his ground in identifying Revadona and Apongan:

Q And since there was also obstructions (sic) between the poultry house and the place of the incident, naturally, you cannot see clearly the faces of the accused, Ronald Revadona and Jacinto Apongan?

A Yes, I recognized them because they came from the place where there was reflection of the bulb.”[23]

With the above clear and unwavering statements of the prosecution eyewitness, there remains no doubt in the mind of this Court that appellant was one of the perpetrators of the barbarous slaughtering of Victoria Samulde. We reiterate the well-entrenched rule that positive and categorical assertions of witnesses generally prevail over bare denials.[24] This doctrine becomes even stronger when there is no showing of ill motive on the part of the eyewitness. Denial and alibi, if not substantiated by clear and convincing evidence, are negative and self-serving evidence bearing no weight in law.[25] Celestino, Jr. particularly falls within the doctrine repeatedly laid down by this Court: the fact that the principal witness is the victim’s son even lends credence to his testimony. His natural interest in securing the conviction of the guilty would deter him from implicating persons other than the culprits; otherwise, the conviction of the innocent would thereby grant immunity to the guilty.[26]

Delay in Reporting Identities of Assailants to Authorities

Celestino Samulde, Jr. was still at his pubescent age when he witnessed the tragic killing of his mother. Instead of immediately revealing the identity of the murderers, he kept it to himself for three probably disquieting and nightmarish years. This long silence though was explained plausibly.

“Court: Did you tell anyone what you saw during that incident when your mother was ambushed by Ronald Revadona and Jacinto Apongan?

A I know them as the persons responsible in the killing of my mother, but because of fear that they might kill me also, I was hesitant to report to the police.”[27]

Such fear was definitely not unfounded since the accused were aware of his presence while they brutally cut short the life of their victim. Additionally, Accused Revadona was admittedly a member of the armed rebel group, New People’s Army, operating in Cotabato.[28] These circumstances must have surely compounded the fear felt by Celestino, Jr. It is the common behavior of people overcome by great fear, not only for their lives but also those of their loved ones, to choose to remain tight-lipped about an incident and suffer in silence, rather than to expose to risk their own safety and that of people whom they care for.[29] Thus, it was only three years after, at age fourteen and in his third year in high school, that Celestino, Jr. overcame his fear and decided to relate to his father what had actually happened that ill-fated evening when his mother was killed.

Ruling on the above, we adhere to long-settled jurisprudence that delay or vacillation in making a criminal

accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained.[30]

With regard to the contention of appellant that Celestino, Jr.'s reaction during the incident was not "normal" under the circumstances, suffice it to say that there is no standard form of human behavior when one is confronted with a strange, startling or frightful experience or a standard rule by which witnesses to a crime react; what is natural to one may be strange to another.[31] For witnesses of criminal violence, it is even more natural to strive to see the faces and general appearance of assailants and to observe the manner in which the crime was committed.[32] Celestino, Jr.'s reaction is understandable under the circumstances. It must have been the greatest shock of his life to see his very own mother being mercilessly knifed to death. His speechless and motionless reaction is consistent with such shock.

At any rate, the issue is one of credibility. In the matter of credibility of witnesses, the familiar and well-accepted rule is that factual findings of the trial court should be highly respected. The trial judge is in a better position to pass judgment on the credibility of witnesses, having had the opportunity to personally hear them, observe their deportment and manner of testifying and detect if they were telling the truth.[33] We find no reason to depart from this rule in this particular case.

Second Issue: Conspiracy

We cannot subscribe to the contention of appellant that the only evidence of conspiracy was the testimony of Araneta which should not be given credit since it did not positively establish that appellant, supposedly a co-conspirator, had been one of the assailants. Even without the aforesaid testimony, conspiracy can be deduced from the concerted acts of appellant and his co-accused Revadona. It is well-entrenched that direct evidence of prior agreement is not indispensable to prove conspiracy as the same can be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted in unison with each other, evincing a common purpose or design.[34] As testified to by Celestino, Jr., Accused Revadona, with a knife in his right hand, tried to grab the head of Celestino, Jr. with his left hand,[35] while appellant immediately approached Mrs. Samulde, thrusting his knife upon her. Failing to get hold of the son, Revadona proceeded to likewise attack Mrs. Samulde. Celestino, Jr. described their concerted action in this wise:

Atty. Lavarias:

You said that you saw Ronald Revadona and Jacinto Apongan stabbed (sic) the victim, Victoria Samulde, was the stabbing simultaneously (sic) or one after the other?

A They were holding my mother when she was stabbed, Ma'am.

Q Was the stabbing simultaneous or one after the other or were they together in stabbing your mother?

A They were together in stabbing my mother, Ma'am.

Q What was the position of your mother when she was stabbed by the two accused?

A First her back was facing her assailant, but when they held my mother, her back was facing them.

Q And your mother was standing at that time when she was stabbed?

A Yes, ma'am.

Q And she was hit at her back?

A No, Ma'am, because they were holding my mother behind and then they stabbed her in front.

Q And what was the position of Ronald Revadona at that time when he stabbed your mother?

A These two accused were holding my mother when they stabbed her.

Q In other words, Ronald Revadona was behind your mother when they stabbed your mother?

A Yes, Ma'am.

Q How many times was your mother stabbed by the two accused?

A I cannot count because the stabbing was fast.

Q Would it be five times?

A Many times but maybe some stabs did not hit my mother.

Q And from the time of (sic) the stabbing up to the time the two accused ran, were you present?

A Yes, I moved backward, but my eyes were focused on them.”[36]

The totality of the acts performed by appellant and Revadona signifies “coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.”[37]

Third Issue: Presumption of Innocence

Appellant claims darkness, the eyewitness’ distance from the assailants and his lack of direct view as circumstances favoring appellant’s innocence which should be appreciated in the assessment of his culpability. This Court opines that, with the extensive discussion of the evidence concerning the first issue propounded by appellant, the constitutional presumption of innocence has been sufficiently overridden.

Fourth Issue: Killing Was Treacherous

Appellant further prays that, if he is not entitled to acquittal, he be made liable only for homicide. The manner of commission of the crime, however, does not allow even for the latter relief. Treachery may be committed even if the attack is frontal, but no less sudden and unexpected, giving the victim no opportunity to repel it or offer any defense of his person.[38] In the case at bench, the victim was innocently walking and totally unaware of the impending attack upon her by the persons she was about to meet ahead. To ensure the success of their criminal design, one of the assailants held the victim’s arms while the other viciously stabbed her. When she fell to the ground, her throat was further slashed, ensuring termination of her life. The suddenness of such savage attack, without the slightest provocation from the victim who was unarmed and had nary an opportunity to repel the aggression or defend herself, ineluctably qualifies the crime with *alevosia*.

The trial court correctly found that evident premeditation was not substantiated by evidence and hence, could not be appreciated as a modifying circumstance. To acknowledge the presence of evident premeditation, there must be direct evidence of the plan and preparation to kill after the plan is conceived,[39] other than the bare testimony of a witness alleging that appellant was present when the plan was conceived and he volunteered to execute it. As regards the circumstance of abuse of superior strength, even if borne out by evidence, the same is absorbed in treachery; thus, it cannot be separately appreciated as an independent aggravating circumstance.[40]

WHEREFORE, the appeal is DENIED. The questioned Decision convicting Appellant Jacinto Apongan of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, to indemnify jointly and severally with Ronald Revadona the heirs of Mrs. Victoria Samulde in the amount of P50,000.00, and to pay proportionate costs of the suit is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, p. 18.

[2] Records, p. 85.

[3] In Criminal Case No. 724.

[4] Rollo, pp. 31-54.

[5] Assailed Decision, p. 23; *ibid.*, p. 54.

[6] Assailed Decision, pp. 15-16; Rollo, pp. 45-46.

[7] TSN, August 29, 1989, pp. 3-29.

[8] TSN, July 18, 1989, pp. 13-21.

[9] *Ibid.*, p. 35.

[10] TSN, December 12, 1989, pp. 7-13 (second set); December 13, 1989, pp. 6-7, 21-25.

[11] TSN, October 5, 1989, pp. 9-10.

[12] *Ibid.*, pp. 28-31.

[13] Assailed Decision, pp. 20-21; Rollo, pp. 51-52.

[14] *Ibid.*

[15] In the Order of the trial court dated August 2, 1993 (records, p. 273), it stated that a notice of appeal was filed by the counsel for defendant Jacinto Apongan, hence, directed the clerk of court to forward the entire records of the case to the Court of Appeals (should have been to this Court). However, there appears only one notice of appeal (records, p. 268) in the records forwarded to this Court, which named Roberto Apongan who was acquitted by the trial court, as party-appellant. But it was accused Jacinto Apongan who filed an Appellant's Brief before this Court.

[16] Rollo, pp. 74-89.

[17] Appellant's Brief, p. 1; Rollo, p. 74.

[18] *Ibid.*, p. 7; *Ibid.*, p. 80.

[19] Brief for Plaintiff Appellee, p. 14.

[20] TSN, August 29, 1989, pp. 3-5.

[21] *Ibid.*, pp. 16-18.

[22] *Ibid.*, p. 25.

[23] *Ibid.*

[24] *People vs. Cayan*, 245 SCRA 66, June 16, 1995.

[25] *People vs. Dinglasan*, G.R. No. 101312, January 28, 1997.

[26] Cf. *People vs. Reoveros*, 247 SCRA 628, 634, August 23, 1995; *People vs. Cabiles*, 248 SCRA 207, September 14, 1995.

[27] TSN, August 29, 1989, p. 26.

[28] TSN, December 13, 1989, pp. 15-16.

[29] *People vs. Reoveros*, *supra*, at p. 633.

[30] *People vs. Briol*, 249 SCRA 574, 583, October 25, 1995, citing several cases.

[31] *People vs. Yadao*, 216 SCRA 1, November 26, 1992.

[32] *People vs. Gomez*, 251 SCRA 455, December 19, 1995, citing various cases.

[33] *Ibid.*, citing *People vs. Morales*, 241 SCRA 267, February 13, 1995.

[34] *People vs. Obzunar*, G.R. No. 92153, December 16, 1996.

[35] TSN, August, 29, 1989, p. 22.

[36] *Ibid.*, pp. 27-28.

[37] *People vs. Dinglasan*, *supra*, citing *People vs. Francisco*, 249 SCRA 526, October 25, 1995.

[38] *People vs. Halili*, 245 SCRA 340, 353, June 27, 1995.

[39] *People vs. Ganzagan, Jr.*, 247 SCRA 220, August 11, 1995.

[40] *People vs. De Leon*, 248 SCRA 609, September 28, 1995; *People vs. Francisco*, 249 SCRA 526, October 25, 1995.

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